

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

CAUSE NO. _____

02D01-08 09-PL-444

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
MIDWEST DIRECT, INC.,)
)
Defendant.)

SEP - 2 2008

**PLAINTIFF'S COMPLAINT FOR INJUNCTION, RESTITUTION,
COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General January Portteus, petitions the Court pursuant to the Indiana Promotional Gifts and Contests Act, Indiana Code § 24-8-2-1, *et seq.*, and the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-8-6-3 and § 24-5-0.5-4(c).
2. At all times relevant to this Complaint, the Defendant, Midwest Direct, Inc., was a for-profit domestic corporation with a principal place of business in Allen County, located at 6061 North Clinton Street, Fort Wayne, Indiana 46825, and transacted business with consumers.

FACTS

3. At least since November 2006, the Defendant has mailed promotional notices to

4. These promotional notices represent that the consumers have won a vacation package or other travel arrangements.

5. When the consumers call to claim their prize, they are informed that they must attend a presentation in order to claim the prize.

6. The presentation is for the Defendant's buying club.

A. Allegations Related to the Defendant's Transactions with Consumers:

7. Based upon the representations in the promotional notices, the following consumers attended a presentation and purchased a membership in Defendant's direct buying service on the following dates for the following amounts:

a)	Ellsworth and Deborah Peck of Albion, Indiana 12/03/2006	\$2,499.00
b)	Ronald and Phyllis Brockmyer of Fort Wayne, Indiana 04/18/2007	\$1,999.00
c)	Terry and Annette Fields of Spencerville, Indiana 11/19/2006	\$2,499.00
d)	Stan and Sue White of Lima, Ohio 09/15/2007	\$2,499.00
e)	Tom and Barb Galvin of Wauseon, Ohio 10/11/2007	\$1,899.00
f)	Thomas and Janet Moser of Bluffton, Indiana 02/23/2008	\$1,899.00
g)	Brian Foss of Fort Wayne, Indiana 10/26/2007	\$1,899.00

TOTAL: \$15,193.00

8. The following consumers received the promotional notices, but declined to purchase a membership in Defendant's direct buying service:

- a) Gayle Cooper of Fort Wayne, Indiana; and
- b) Leif Jensen of Fort Wayne, Indiana.

6. Pursuant to Indiana's Promotional Gifts and Contests Act, Ind. Code § 24-8-2-1,

7. The Defendant's promotional notice failed to include or disclose the following:
- a) the name of the promoter and sponsor of the promotion, contrary to Ind. Code § 24-8-3-2;
 - b) the verifiable retail value for the prize the participant has been awarded, contrary to Ind. Code § 24-8-3-3;
 - c) the verifiable retail value for each prize in immediate proximity with each listing of the prize in each place it appears on the notice, contrary to Ind. Code § 24-8-3-5(a);
 - d) the verifiable retail value and odds for each prize in the same size type and boldness as the prize, contrary to Ind. Code § 24-8-3-5(b);
 - e) the requirement or invitation to view, hear, or attend a sales presentation in order to claim a prize in at least 10 point boldface type on the first page of the notice, contrary to Ind. Code § 24-8-3-6; and
 - f) that the prize offered will require a person to purchase additional goods or services, including shipping fees, handling fees, or any other charge on the first page of the notice in at least 10 point boldface type using the following appropriately completed statement: "You must pay \$_____ in order to receive this item," contrary to Ind. Code § 24-8-3-7.

COUNT I – VIOLATIONS OF THE PROMOTIONAL GIFTS AND CONTESTS ACT

8. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 7 above.
9. The promotional notices referred to in paragraph 3 are "promotions" as defined by Ind. Code § 24-8-2-5.
10. The Defendant is a "sponsor" as defined by Ind. Code § 24-8-2-7.
11. The Defendant's failure to include or disclose the required information, as referred to in paragraph 7, violated the Promotional Gifts and Contests Act, Ind. Code § 24-8-2, *et seq.*

COUNT II – VIOLATION OF THE DECEPTIVE CONSUMER SALES ACT

12. The Plaintiff realleges and incorporated by reference the allegations contained in paragraphs 1 through 11 above.

13. The Defendant's violations of the Promotional Gifts and Contests Act, referred to in paragraph 11, constitute deceptive acts by the Defendants, in accordance with Ind. Code § 24-8-6-3.

COUNT III – KNOWING AND INTENTIONAL VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

14. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 13 above.

15. The deceptive acts set forth in paragraphs 4-7 were committed by the Defendant with the knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Midwest Direct, Inc., for a permanent injunction pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendants from the following:

- a. In the course of sponsoring promotions, failing to send promotional notices that contain, at minimum, the following:
 - i. the name and address of the promoter and the sponsor of the promotion;
 - ii. the verifiable retail value of each prize a participant has been awarded or may have been awarded;

- iii. the verifiable retail value and odds for each prize stated in immediate proximity with each listing of the prize in each place it appears on the notice;
 - iv. the verifiable retail value for each prize listed in the same size type and boldness as the prize;
 - v. if a person is required or invited to view, hear, or attend a sales presentation in order to claim a prize that has been awarded or may have been awarded, the requirement or invitation must be conspicuously disclosed to the person in the notice in at least 10 point boldface type on the first page of the notice; and
 - vi. if a prize is offered or given that will require a person to purchase additional goods or services, including shipping fees, handling fees, or any other charge, the requirement and additional cost to the person must be clearly disclosed on the first page of the notice, disclosure must be made by using the following appropriately completed statement: "You must pay \$ _____ in order to receive this item," and the disclosure statement must be in at least 10 point boldface type.
- b. Conducting any business activity in the State of Indiana unless those activities are in full compliance with the Promotional Gifts and Contests Act, Ind. Code § 24-8-2, *et seq.* and the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1, *et seq.*


AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant, Midwest Direct, Inc., for the following relief:

- a. cancellation of the Defendants' unlawful contracts with all consumers, including but not limited to the consumers identified in paragraph 4, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers for the purchase of items from the Defendant, including but not limited to the consumers identified in paragraph 4, in an amount to be determined at trial;
- c. civil liability, pursuant to Ind. Code § 24-8-6-2, for violation of the Promotional Gifts and Contests Act to the aggrieved parties identified in paragraphs 4 and 5, in an amount to be determined at trial;
- d. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- e. on Count III of the Plaintiff's complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendant's knowing violations of the Promotional Gifts and Contests Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- f. on Count III of the Plaintiff's complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-8, for the Defendant's intentional violations of the Promotional Gifts and Contests Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- g. all other just and proper relief

Respectfully submitted,

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By:


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